



May 20, 1999

Mr. Scott Fawcett  
Legal Counsel  
Open Records Division  
Comptroller of Public Accounts  
LBJ State Office Building  
111 East 17th Street  
Austin, Texas 78774

OR99-1399

Dear Mr. Fawcett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124429.

The Comptroller of Public Accounts (the “comptroller”) received a request for the “‘rule file’ for Rule 3.356 (Real Property Services).” You assert that portions of the requested information are excepted from required public disclosure by sections 552.101, 552.107, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 111.006(a)(2) of the Tax Code provides that information “secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer’s books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer” is confidential. Tax Code § 111.006(a)(2). Chapter 151 of the Tax Code, which pertains to sales, excise, and use tax, also has a similar confidentiality provision. *See* Tax Code

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<sup>1</sup>You informed us that you have withdrawn your claims under sections 552.103 and 552.108 of the Government Code. None of the requested information may be withheld under these exceptions.

§ 151.027(b). We agree that the information you have marked under these provisions of the Tax Code is information obtained from a taxpayer. We have marked additional information that is confidential under section 111.006. Accordingly, you must withhold such information pursuant to sections 111.006(a)(2) and 151.027 of the Tax Code.<sup>2</sup>

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. We agree with most of your section 552.107 markings. We have marked a small portion of information that must be released because it is not a confidential client communication or legal advice excepted from disclosure by section 552.107.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body.

Generally, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 4-5 (1993). Yet, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.* We agree with most of your section 552.111 markings. We have marked a small portion of information that must be released because it is factual information that is not excepted from disclosure under section 552.111.

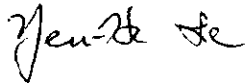
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination

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<sup>2</sup>You have marked some information as excepted from public disclosure under section 552.101. We have reviewed the information and conclude that it is not confidential under either provision of the Tax Code. Thus, it must be released. We have marked this portion of the information found on page 2 of the February 26, 1992 memorandum that must be released.

regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Yen-Ha Le".

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 124429

Encl.: Marked documents

cc: Mr. John D. Christian  
Foster, Malish & Hill, L.L.P.  
1403 West Sixth Street  
Austin, Texas 78703  
(w/o enclosures)